

# EXHIBIT

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

05-CR-621 (KMK)

5 ALBERTO VILAR, GARY TANAKA,

6 Defendants.

7 -----x

8 New York, N.Y.  
9 April 13, 2007  
2:22 p.m.

10 Before:

11 HON. KENNETH M. KARAS,

12 District Judge

13  
14 APPEARANCES

15 MICHAEL J. GARCIA  
16 United States Attorney for the  
Southern District of New York

MARC O. LITT

17 DEIRDRE A. McEVOY

BENJAMIN NAFTALIS

18 Assistant United States Attorneys

19 WILSON SONSINI GOODRICH & ROSATI  
Attorneys for Defendant Tanaka

20 BY: GLENN C. COLTON, ESQ.

JESSICA L. MARGOLIS, ESQ.

21 IVAN S. FISHER, ESQ.

22 WILLIAM J. DAVIS, ESQ.

JEFFREY HOFFMANN, ESQ.

23 Attorneys for Defendant Vilar

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1     Whatever's happened has happened. But that's your call. But I  
2     don't think the law requires it. There's no privilege, okay,  
3     and we're not dealing with a *Kastigar* type of situation, in  
4     terms of a legal bar. But maybe the principle is something  
5     that will be introduced in this case. Okay?

6             Mr. Colton.

7             MR. COLTON: I guess in the interests of trying to  
8     make sure all the issues are before the Court, I imagine that  
9     we may have a debate and will have a debate on the usability  
10    and admissibility of documents your Honor has suppressed but  
11    yet ordered produced pursuant to the subpoena. So if the  
12    government is going to take the position that that vast  
13    quantity of documents that were suppressed but yet responsive  
14    to the brief form subpoena are somehow unsuppressed because  
15    they would have been received through the subpoena, I would  
16    like to know that because that informs the massive evidence  
17    that's potentially usable in the trial, the potential length of  
18    the trial and how much work is to be done. And if the  
19    government has a position, please tell us. If they don't,  
20    please ask the government to give you a position by  
21    April 27<sup>th</sup>.

22            THE COURT: It's pretty clear to me that the  
23    government's view is, even if something is suppressed by the  
24    modified search warrant, they get to use it if it's responsive  
25    to the subpoena. Am I wrong on that, Mr. Litt?

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1 MR. LITT: No.

2 THE COURT: So you're saying you're going to challenge  
3 their use of materials that are suppressed under the warrant  
4 but responsive to the subpoena, is that what you're saying?  
5 You may challenge the admissibility of those materials.

6 MR. COLTON: Yes.

7 THE COURT: And this is a man who wants to go to trial  
8 in July.

9 MR. COLTON: It seems to me, your Honor --

10 THE COURT: Yes.

11 MR. COLTON: -- that Mr. Tanaka's right to a speedy  
12 trial shouldn't be hampered or hindered by the fact that the  
13 government violated his Fourth Amendment rights by the way in  
14 which they did the search. And that's a problem I'm having,  
15 and it's a problem I'm having in explaining to my client --

16 THE COURT: Or that the government is otherwise  
17 entitled to the documents because the subpoena that it issued  
18 was lawful.

19 MR. COLTON: That --

20 THE COURT: And we have talked about this before,  
21 Mr. Colton. There is always a tension between a defendant's  
22 rights to bring whatever motions it thinks are going to advance  
23 his interest in the case and a defendant's interest in a speedy  
24 trial. One cannot go to trial as fast as one can without  
25 motions as when he files motions. And Congress has said that

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1 the time is excluded, which is something I'm probably going to  
2 write on too, because you have an application somewhere in the  
3 distant past that you wanted me to waive the exclusion based on  
4 motions being filed. If you think you want to stop these  
5 materials that are responsive to the subpoena that were  
6 suppressed under warrant coming into evidence, then you can  
7 make that application. But the minute you make that  
8 application, the speedy trial clock is excluded.

9 MR. COLTON: The other way that we would -- I would  
10 not want to do it this way, but the other way it could be done  
11 is simply object at trial when the government seeks to put  
12 something in.

13 THE COURT: Not happening.

14 MR. COLTON: Well, that -- I think it would be an  
15 improper -- not improper -- unhelpful way to conduct a trial.  
16 So what I'm suggesting and I ask your Honor to do is, I don't  
17 want to make a motion where the government hasn't stated a  
18 position. So if we know the position, we can decide whether to  
19 make a motion.

20 THE COURT: You've heard their position. Anything  
21 they think is responsive to the subpoena, even if it was  
22 suppressed under the warrant, they think they get to use at  
23 trial.

24 MR. COLTON: Well, we will decide by April 27<sup>th</sup>  
25 whether to file such a motion. And the request I'm going to

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1 make of the Court then is a very expeditious briefing schedule  
2 so that we don't lose any more time than is absolutely  
3 necessary. And a forecast I would ask the Court to do is to  
4 get this done within the currently existing exclusion, which  
5 still runs another month or so.

6 THE COURT: I'm not going to forecast my response to  
7 that request.

8 All right. Anything else?

9 MR. LITT: No, your Honor.

10 THE COURT: All right. I'm around the next couple of  
11 weeks, I'm on trial, so if you need to see me between now and  
12 April 27<sup>th</sup>, I'm around. It will be at the end of the day or  
13 on Friday.

14 I bid you all a good weekend. See you in a couple  
15 weeks.

16 MR. FISHER: Have a good weekend, your Honor.

17 MR. COLTON: Thank you, your Honor.

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